

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

CV 05-00748 HGL

United States District Court		District of Hawaii	
Name (under which you were convicted): Russell Gordon Mascoto		Docket or Case No.: 00-00379-HG	
Place of Confinement: United States Penitentiary Lompoc		Prisoner No.: 87887-022	
UNITED STATES OF AMERICA		Movant (Include name under which you were convicted)	
District of Hawaii		v. Russell Gordon Mascoto	

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

DEC 05 2005

MOTION

at 3 o'clock and 45 min. p  
SUE BEITIA, CLERK

1. (a) Name and location of court that entered the judgment of conviction you are challenging: United States District Court for the district of Hawaii

(b) Criminal docket or case number (if you know): 00-00379 (01)HG

2. (a) Date of the judgment of conviction (if you know): December 17, 2003

(b) Date of sentencing: December 8, 2003

3. Length of sentence: 10 years

4. Nature of crime (all counts): (1 Count) Intent to distribute a quantity of crystal Methamphetamine "Ice" in excess of 50 grams. A schedule II substance.

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? \_\_\_\_\_

EXHIBIT  
B

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐

Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:

(a) Name of court: United States Court of Appeals for the Ninth Circuit

(b) Docket or case number (if you know): 00-00379-HG

(c) Result: Appeal Dismissed

(d) Date of result (if you know): December 17, 2004

(e) Citation to the case (if you know): \_\_\_\_\_

(f) Grounds raised: 1. Whether Defendant-Appellant knowingly and voluntarily Waived the right to appeal his sentence.

II. Whether defendants possession of 231 Grams of a substance containing 72% Methamphetamine Required Imposition of a Mandatory Minimum 10-year prison sentence under U.S.C Section 841(B)(1)(A) Where the Indictment and written plea agreement both misidentified the chemical substance as being more than 50 Grams of Crystal Methamphetamine-"ICE"?

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know): \_\_\_\_\_

(2) Result: \_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: \_\_\_\_\_

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE: Ineffective Assistance of Counsel**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I dismissed my Lawyer due to Misrepresentation. He misrepresented me, by me Pleaing to a faulty plea agreement under 841(B)(1)(A) Pure Methamphetamine. Insted I should have plead to 841(B)(1)(B). Also because the prosecution Enhanced my sentence for the type of Methamphetamine According to U.S.S.G. 2D1.1(C) which was not charged in my Indictment. My Judge also made the following comment during Re-sentencing:

It would seem to me that given that the plea agreement contained an inaccuracy that that would open the door for an appeal, because given that inaccuracy - while I agree with the (Assistant U.S. Att) that it dosent necessarily make a difference if you interpret the statue the way he has, and the way some of those 9TH. CIR. cases do, it still is an issue which means that the plea agree-

ment was not totally accurate an it is an intresting issue, an it could be the  
(b) Direct Appeal of Ground One: case to you know it has lots of aspects to make it a case thats worthy of appeal, I think.

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: My lawyer thought that I had a strong issue by me pleaing out to a faulty indictment/plea agreement because it was not knowingly and voluntarily, because I was unaware and misrepresented when I signed my plea agreement that it was inaccurate.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_



Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

**GROUND TWO: Ameline II En Banc**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Ameline states if the record shows that the judge would rule differently I would be entitled to Re-sentencing. It clearly shows when I was sentenced on September 7, 2001 to 87-months imprisonment, which was appealed by the government due to the Buco land EN Banc decision. I was re-sentenced to 120-months imprisonment.

The district court denied my sentencing objections to the presentence report stating that there was 9th Cir. cases against me allowing the conversion of impure methamphetamine to pure methamphetamine according to U.S.S.C. 201.1 (a) 1.

Now due to new rulings in the 9th cir. those cases would not be against me allow the judge to rule differently. The U.S.S.G Would now be advisory only. Also any enforcement would have to be brought before a jury.

**(b) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

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**GROUND THREE:** \_\_\_\_\_

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

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(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

\_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

**GROUND FOUR:** \_\_\_\_\_

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):



**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: \_\_\_\_\_

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☐  
If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. \_\_\_\_\_

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: \_\_\_\_\_

(b) At arraignment and plea: \_\_\_\_\_

(c) At trial: \_\_\_\_\_

(d) At sentencing: \_\_\_\_\_

(e) On appeal: \_\_\_\_\_

(f) In any post-conviction proceeding: \_\_\_\_\_

(g) On appeal from any ruling against you in a post-conviction proceeding: \_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☐

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: \_\_\_\_\_

(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\* \_\_\_\_\_

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: Remand for Resentencing

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or any other relief to which movant may be entitled.

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Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on November 29, 2005 (month, date, year).

Executed (signed) on November 29, 2005 (date).

Russell Mancoto  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. \_\_\_\_\_

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IN FORMA PAUPERIS DECLARATION

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[Insert appropriate court]

\* \* \* \* \*



Name/Address of Attorney or Pro Per

Russell Mascoto 87887-022  
United States Penitentiary  
3901 Klein Blvd Compton, CA 93436

Telephone \_\_\_\_\_

☐ FPD ☐ Apptd ☐ CJA ☒ Pro Per

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

United States of America  
District of Hawaii PLAINTIFF(S),  
 v.

Russell Mascoto

DEFENDANT(S).

CASE NUMBER:

00-00379-HG

Motion, Affidavit and Order re: Appeal In Forma

Pauperis: ☐ 28 U.S.C. 753(f)
☒ 28 U.S.C. 1915

**MOTION AND AFFIDAVIT**

The undersigned Russell Mascoto, a party in the within action, moves the Court under 28 USC § 1915 for authorization to prosecute an appeal without prepayment of fees and costs or security therefor, and for the preparation of a Court Reporter's transcript at government expense.

1. I believe I am entitled to redress, and the issues which I desire to present on my proposed appeal are the following:

a. Ineffective assistance of Counsel

b. AMELINE II EN BANC.

c. \_\_\_\_\_

2. Because of my poverty I am unable to pay the costs of the proposed appeal proceeding or to give security therefor. I swear that the following responses are true.

a. Are you presently employed? ☒ Yes ☐ No. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer. \_\_\_\_\_

b. Have you received, within the past twelve months, any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? ☐ Yes ☒ No.

If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_



**ORDER**

*(The check mark in the appropriate box indicates the Order made)*

- ☐ **The court has considered the motion and the motion is DENIED.** The Court certifies that the proposed appeal is not taken in good faith under 28 U.S.C. 1915(a) and is frivolous, without merit and does not present a substantial question within the meaning of 28 U.S.C. 753(f).

The Clerk is directed to serve copies of this Order, by United States mail, upon the parties appearing in this cause.

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*United States District Judge*

- ☐ **The court has considered the motion and the motion is GRANTED.** It appears to the Court that the proposed appeal is taken in good faith within the meaning of 28 U.S.C. 1915(a). The Court certifies that the proposed appeal is not frivolous, that it presents a substantial question. The within moving party is authorized to prosecute an appeal in forma pauperis to the United States Court of Appeals for the Ninth Circuit without pre-payment of any fees or costs and without giving security therefor.
- ☐ A transcript is needed to decide the issue presented by the proposed appeal, all within the meaning of 28 U.S.C. 753 (f). The Court Reporter is directed to prepare and file with the Clerk of this Court an original and one copy of a transcript of all proceedings had in this Court in this cause; the attorney for the appellant is advised that a copy of the transcript will be made available to him. The expense of such transcript shall be paid by the United States pursuant to 28 U.S.C. 1915(c) and 753(f).

The Clerk is directed to serve copies of this Order, by United States mail, upon the parties appearing in this cause.

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*United States District Judge*

## Inmate Statement



Inmate Reg #:	87887022	Current Institution:	Lompoc USP
Inmate Name:	MASCOTO, RUSSELL	Housing Unit:	K
Report Date:	11/29/2005	Living Quarters:	K03-020L
Report Time:	3:13:24 PM		

Alpha		Reference#	Payment#	Receipt#	Transaction Type	Transaction	Encumbrance
Code	Date/Time					Amount	Amount Ending Balance
LOM	11/22/2005 8:20:30 PM	60			Sales	(\$136.70)	\$94.55
LOM	11/9/2005 8:10:53 PM	55			Sales	(\$236.21)	\$231.25
LOM	11/9/2005 5:03:00 PM	33302906			Western Union	\$100.00	\$467.46
LOM	11/7/2005 2:01:10 PM	IPPOCT			Payroll - IPP	\$5.25	\$367.46
LOM	10/26/2005 8:13:19 PM	67			Sales	(\$16.20)	\$362.21
LOM	10/26/2005 8:11:06 PM	66			Sales	(\$30.55)	\$378.41
LOM	10/24/2005 7:45:17 PM	ITS1024			ITS Withdrawal	(\$400.00)	\$408.96
LOM	10/7/2005 4:59:50 PM	6ICP1005			Inmate Co-pay	(\$2.00)	\$808.96
LOM	10/6/2005 2:10:21 PM	6ICP1005			Inmate Co-pay	(\$2.00)	\$810.96
LOM	10/5/2005 3:03:29 PM	33300406			Western Union	\$100.00	\$812.96
LOM	10/1/2005 6:43:11 PM	ITS1001			ITS Withdrawal	(\$100.00)	\$712.96
LOM	9/29/2005 5:10:55 AM	70142201			Lockbox - CD	\$500.00	\$812.96
LOM	9/22/2005 8:12:42 PM	75			Sales	(\$278.16)	\$312.96
LOM	9/15/2005 8:08:58 PM	55			Sales	(\$13.05)	\$591.12
LOM	9/12/2005 5:05:03 AM	70140903			Lockbox - CD	\$500.00	\$604.17
LOM	9/7/2005 2:36:49 PM	33324205			Western Union	\$100.00	\$104.17
LOM	9/1/2005 8:07:41 PM	61			Sales	(\$36.25)	\$4.17
LOM	8/25/2005 8:25:43 PM	45			Sales	(\$240.70)	\$40.42
LOM	8/18/2005 8:18:39 PM	111			SPO - Released		\$52.50
LOM	8/12/2005 8:35:39 PM	ITS0812			ITS Withdrawal	(\$100.00)	\$281.12
LOM	8/11/2005 8:41:21 PM	57			Sales	(\$104.15)	\$381.12
LOM	8/5/2005 11:05:30 AM	IPPJUL			Payroll - IPP	\$31.60	\$485.27
LOM	7/28/2005 8:43:35 PM	101			Sales	(\$19.95)	\$453.67
LOM	7/21/2005 8:51:13 PM	68			Sales	(\$52.60)	\$473.62
LOM	7/14/2005 8:39:12 PM	69			Sales	(\$107.20)	\$526.22
LOM	7/13/2005 5:05:54 AM	70136701			Lockbox - CD	\$500.00	\$633.42
LOM	7/8/2005 8:10:18 AM	IPPJUN			Payroll - IPP	\$33.52	\$133.42
LOM	6/26/2005 9:47:04 PM	ITS0626			ITS Withdrawal	(\$66.00)	\$99.90
LOM	6/26/2005 5:03:17 AM	33319005			Western Union	\$100.00	\$165.90
LOM	6/21/2005 1:45:42 PM	1577		93900	Local Collections	\$6.95	\$65.90
LOM	6/16/2005 4:43:14 PM	7			Sales	\$0.00	\$58.95
LOM	6/13/2005 8:41:56 PM	91			Sales	(\$66.20)	\$58.95
LOM	6/13/2005 5:28:02 PM	ITS0613			ITS Withdrawal	(\$10.00)	\$125.15

LOM	6/11/2005 9:40:07 AM	ITS0611	ITS Withdrawal	(\$25.00)	\$135.15
LOM	6/10/2005 1:45:00 PM	IPPMAY	Payroll - IPP	\$32.40	\$160.15
LOM	6/7/2005 9:23:22 PM	ITS0607	ITS Withdrawal	(\$25.00)	\$127.75
LOM	6/7/2005 6:19:48 AM	33317505	Western Union	\$100.00	\$152.75
LOM	5/9/2005 9:51:27 PM	ITS0509	ITS Withdrawal	(\$3.00)	\$52.75
LOM	5/9/2005 8:19:41 PM	51	Sales	(\$8.70)	\$55.75
LOM	5/9/2005 8:18:53 PM	50	Sales	(\$8.80)	\$64.45
LOM	5/6/2005 8:17:28 PM	ITS0506	ITS Withdrawal	(\$1.00)	\$73.25
LOM	5/5/2005 10:42:18 AM	111	SPO	(\$52.50)	-----
LOM	5/4/2005 6:03:37 PM	ITS0504	ITS Withdrawal	(\$3.00)	\$74.25
LOM	5/2/2005 8:12:19 PM	67	Sales	(\$18.25)	\$77.25
LOM	4/25/2005 8:05:00 PM	67	Sales	(\$41.90)	\$95.50
LOM	4/11/2005 8:58:56 PM	47	Sales	(\$62.80)	\$137.40
LOM	4/8/2005 7:13:15 PM	ITS0408	ITS Withdrawal	(\$59.00)	\$200.20
LOM	4/4/2005 6:14:02 PM	14	Sales	(\$141.35)	\$259.20
LOM	4/3/2005 6:27:14 PM	ITS0403	ITS Withdrawal	(\$14.00)	\$400.55
LOM	3/23/2005 5:06:44 AM	70128901	Lockbox - CD	\$200.00	\$414.55

12

Total Transactions: 55

Totals: \$94.55 \$0.00

Current Balances

<u>Alpha Code</u>	<u>Available Balance</u>	<u>Pre-Release Balance</u>	<u>Debt Encumbrance</u>	<u>SPO Encumbrance</u>	<u>Other Encumbrance</u>	<u>Outstanding Instruments</u>	<u>Administrative Holds</u>	<u>Account Balance</u>
LOM	\$94.55	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$94.55
<b>Totals:</b>	<b>\$94.55</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$94.55</b>



UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII  
300 ALA MOANA BOULEVARD, ROOM C-435  
HONOLULU, HI 96850-0435

HELEN GILLMOR  
UNITED STATES DISTRICT JUDGE

TEL (808)541-3502  
FAX (808)541-3579

## FAX TRANSMITTAL

FROM: U. S. District Judge Helen Gillmor

TO: Myles S. Breiner, Attorney for Defendant  
FAX 566-0347  
Thomas Muehleck, Assistant U. S. Attorney  
FAX 541-2958  
Neil W. Tsukayama, U. S. Probation Officer  
FAX 541-1345

DATE: July 3, 2003

SUBJECT: Crim. No. 00-00379 HG-01  
United States v. Russell Gordon Mascoto  
Re-sentencing, July 7, 2003, 2:15 p.m.

Enclosed is a letter the Court received from Defendant Mascoto.

Page 1 of 2 pages transmitted.

**RECEIVED**  
CLERK, U.S. DISTRICT COURT

JUL 03 2003

DISTRICT OF HAWAII

TO JUDGE HELEN GILMORE,

I AM WRITING IN CONCERN OF A COUPLE OF ISSUES THAT I WOULD LIKE TO BRING BEFORE THE COURT. I WOULD LIKE TO DISMISS MY ATTORNEY MYLES J. BREINER DUE TO NO ATTORNEY-CLIENT COMMUNICATION AND ALSO BECAUSE OF FINANCIAL PROBLEMS. I HIRED MYLES BREINER BECAUSE I WAS VILLETEARATE WITH THE LAW & I WAS EXPECTING TO BE REPRESENTED T MY BEST INTEREST. BUT I FEEL THAT I HAVE BEEN MISREPRESENTED BY PLEADING GUILTY TO A FAULTY INDICTMENT UNDER 841 (B) (1) (A) WHEN I SHOULD HAVE BEEN CHARGED UNDER 841 (B) (1) (B) BECAUSE THE METHAMPHETAMINE THAT I'M GETTING CHARGED FOR ONLY TESTED 72% FOR A "MIXTURE" OR SUBSTANCE CONTAINING A DETECTABLE AMOUNT OF METHAMPHETAMINE, IT'S SALTS, ISOMERS, OR SALTS OF IT'S ISOMERS; YOUR HONOR I DON'T WANT TO WASTE THE COURTS TIME, BUT I ALSO DON'T WANT TO GET CHARGED FOR THE FORM OF PURE METHAMPHETAMINE, WHEN WHAT I HAVE IS IMPURE METHAMPHETAMINE.

YOUR HONOR I AM NOT PREPARED TO BE SENTENCED SO YOUR HELP IN THESE MATTERS WILL BE GREATLEY APPRECIATED.

SINCERLY,

Russell M. M. M.

STEVEN S. ALM  
United States Attorney  
District of Hawaii

ELLIOT ENOKI  
First Assistant U.S. Attorney

THOMAS MUEHLECK  
Assistant U.S. Attorney  
Room 6100, PJKK Federal Bldg.  
300 Ala Moana Boulevard  
Honolulu, Hawaii 96850  
Telephone: (808) 541-2850

Attorneys for Plaintiff  
UNITED STATES OF AMERICA

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

SEP 14 2000  
at 1 o'clock and 40 min. P.  
WALTER A. Y. H. CHINN, CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
RUSSELL GORDON MASCOTO, )  
 )  
Defendant. )  
\_\_\_\_\_ )

CR. NO.

CRO 0 00379

HG

INDICTMENT

[21 U.S.C. § 841(a)(1)]

INDICTMENT

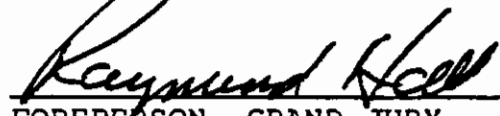
The Grand Jury charges that:

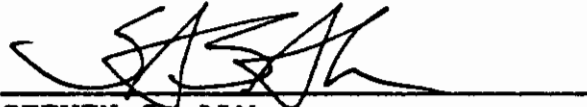
On or about September 7, 2000, in the District of Hawaii, defendant RUSSELL GORDON MASCOTO did knowingly and intentionally possess with intent to distribute a quantity of crystal methamphetamine - "ice," in excess of 50 grams, a Schedule II controlled substance.


All in violation of Title 21, United States Code,  
Section 841(a)(1).

DATED: Sep 14, 2000, at Honolulu, Hawaii.

A TRUE BILL

  
FOREPERSON, GRAND JURY

  
STEVEN S. ALM  
United States Attorney  
District of Hawaii

  
ELLIOT ENOKI  
First Assistant U.S. Attorney

  
THOMAS MUEHLECK  
Assistant U.S. Attorney

United States v. Russell Gordon Mascoto  
"Indictment"  
Cr. No. \_\_\_\_\_

mandatory minimum sentence determinations is not frivolous as that term is used in Anders v. California, 386 U.S. 738, *reh'g denied*, 388 U.S. 924, 87 S.Ct. 1396 (1967) and requests that this Court reconsider the issue in light of Congress' inaction.

Additionally, although the district court rejected Mascoto's objections to the imposition of a 10-year minimum sentence, it expressed its view that the issue may be worthy of appellate review, especially given the inaccurate references to drug type in the present case:

It would seem to me that given that the plea agreement contained an inaccuracy, that that would open the door for an appeal, because given that inaccuracy—while I agree with [the government] that it doesn't necessarily make a difference if you interpret the statute the way he has, and the way some of those Ninth Circuit cases do, it still is an issue which means that the plea agreement was not totally accurate, and it is an interesting issue, and it could be the case to—you know...it has a lot of aspects that make it a case that's worthy of appeal, I think.

[ER, 67].

Therefore, for all the above-stated reasons, Mascoto respectfully requests that this Court vacate his 10-year sentence of imprisonment and remand his case back to the district court with instructions to impose a sentence requiring only a 5-year minimum prison sentence under 21 U.S.C. Section 841 (b)(1)(B)(viii).